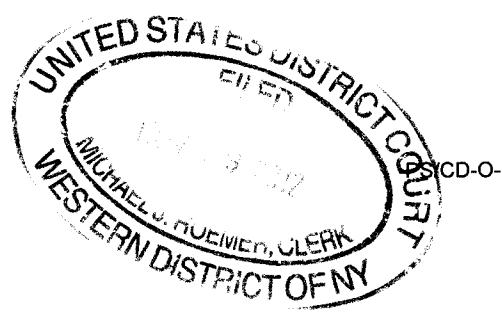


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



WILLIE C. ELLIOTT, 89C0148,

Plaintiff,

-v-

DECISION AND ORDER
12-CV-6371Fe

Judge MARIO J. ROSSETTI, Erie County
Supreme Court, Part #15, New York State,

Defendants.

By Order dated October 3, 2012, the Court converted plaintiff's action, filed pursuant to 42 U.S.C. § 1983, to a petition pursuant to 28 U.S.C. § 2254, on the basis that the relief requested was only available by way of a habeas corpus petitioner. In the interest of justice, the petition was transferred to the Second Circuit Court of Appeals for determination of whether Mr. Elliott was authorized to bring the petition. Mr. Elliott had paid the \$350.00 filing fee.

The Court inadvertently failed to order the refund of the surplus of Mr. Elliott's \$350.00 filing fee over the amount necessary to file a habeas petition, \$5.00. The Clerk of Court is directed to ensure the refund of \$345.00 to Mr. Elliott on the basis that the civil action fee was paid in error.

SO ORDERED.

Dated: Nov 20, 2012
Rochester, New York

Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge